

## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

August 02, 2019  
SPR19/1545

Ms. Ava Sasani  
MuckRock News  
411A Highland Ave  
Somerville, MA 02144

Dear Ms. Ava Sasani:

I have received your letter appealing the response of the University of Massachusetts - Amherst to your request for records.

I have directed a member of my staff, Stephen Shorey, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray".

Rebecca S. Murray  
Supervisor of Records

cc: Christine M. Wilda

## Rastellini, Patricia (SEC)

---

**From:** 76083-74339910@requests.muckrock.com  
**Sent:** Friday, August 02, 2019 2:19 PM  
**To:** pre@sec.ma.us  
**Cc:** SEC-DL-PREWEB  
**Subject:** RE: Massachusetts Public Records Law Request: UMASS Amherst and Raytheon  
**Attachments:** case1.pdf; Case2.pdf;  
FW20Massachusetts20Public20Records20Law20Request20Raytheon20and20UMASS20P  
ublic20Record\_9odogcX2.pdf

August 2, 2019

This is a follow up to a previous request:

To Whom It May Concern:

This is an appeal under the Massachusetts Public Records Law of exemptions applied and a cost estimate issued by the University of Massachusetts, Amherst in response to my June 25, 2019 request related to the University of Massachusetts, Amherst's contracts relationship with Raytheon.

In the response, the agency stated it would be withholding particular records in their entirety under exemptions "a" and "u" under G.L. c. 93 , in addition to requesting payment of \$2,200 to complete my public records request. Both the request and the response letter from UMass can be found via this link:  
<https://www.muckrock.com/foi/massachusetts-1/umass-amherst-and-raytheon-76083/>

The University explained that it would be fully withholding a number of documents and that those it would release, approximately 92 records by the agency's estimate, would require additional time to process.

In their estimation, UMass Amherst provided the following calculation:

Search: 5 hours at \$25/hour = \$125

Segregate/Redaction: 87 hours at \$25/hour = \$2,175

No charge for first 4 employee hours = -\$100

Total = \$2,200

Appeal the failure to segregate and redact potentially-exempt documents:

Though the University did cite exemption (u) to explain their charge for segregation and redaction of documents, it does not justify the complete nondisclosure. They are required to segregate and redact.

The University has not sufficiently explained why they need 92 hours to redact "trade secret" information from just 92 documents.

In a similar appeals case, decided by the Supervisor of Public Records, (attached here as "case #2), the Commonwealth found that a public records officer:

“May assess a charge for the segregation and redaction of exempt material under Exemptions (c) and/or (o) of the Public Records Law, however, based on the MBTA’s July 1st fee estimate, it is unclear why it requires a total of 9 hours to redact the responsive records. Particularly, it is unclear the number of records the MBTA is looking to redact and the number of pages there are. It is additionally uncertain how many minutes per page the MBTA requires to review the responsive records. The MBTA must clarify these issues.”

Simply invoking any exemption does not provide sufficient basis for the University’s fee AND withholding of documents.

Unreasonable cost estimate:

This estimate assumes that each document will require one hour of work performed at the maximum rate allowable under the State’s records law. I appeal the validity of this appraisal as a good faith estimate, as required under the law.

In the November 2018 Appeals decision (attached and labeled as “case #1”), the Commonwealth found that municipalities and agencies have to meet a “burden of specificity in assessing the number of hours and explaining why the estimated amount of time is required to produce the record.”

The state also found that records officers have to “explain which employee’s hourly rate was used to calculate the fee and whether that hourly was the lowest paid hourly rate of the employee who was capable of undertaking the tasks involved to produce the records.”

We further contest any application of fees to search and redaction time used for records to which an outside statute cannot be applied:

In compliance with the precedent set by your office and the Massachusetts Public Records law, please instruct the FOIA officers at UMass Amherst to revise their fee estimate to a more reasonable proposal.

Best,  
Ava Sasani

Filed via MuckRock.com

E-mail (Preferred): 76083-74339910@requests.muckrock.com

Upload documents directly:

[https://accounts.muckrock.com/accounts/login/?url\\_auth\\_token=AAAaUp0xsVhLfU1T0ucb9gaB3V0%3A1htc8e%3AZN3n0U9zZeZ2gCj9VZSxIY4pp6k&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency\\_login%252Funiversity-of-massachusetts-amherst-193%252Fumass-amherst-and-raytheon-76083%252F%253Femail%253Dpre%252540sec.ma.us](https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAaUp0xsVhLfU1T0ucb9gaB3V0%3A1htc8e%3AZN3n0U9zZeZ2gCj9VZSxIY4pp6k&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Funiversity-of-massachusetts-amherst-193%252Fumass-amherst-and-raytheon-76083%252F%253Femail%253Dpre%252540sec.ma.us)

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News  
DEPT MR 76083  
411A Highland Ave  
Somerville, MA 02144-2516

PLEASE NOTE: This request was filed by a MuckRock staff reporter. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

--  
On July 30, 2019:

Subject: RE: Massachusetts Public Records Law Request: UMASS Amherst and Raytheon  
To Whom It May Concern:

This is an appeal under the Massachusetts Public Records Law of exemptions applied and a cost estimate issued by the University of Massachusetts, Amherst in response to my June 25, 2019 request related to the University of Massachusetts, Amherst's contracts relationship with Raytheon.

In the response, the agency stated it would be withholding particular records in their entirety under exemptions "a" and "u" under G.L. c. 93 , in addition to requesting payment of \$2,200 to complete my public records request. Both the request and the response letter from UMass can be found via this link:  
<https://www.muckrock.com/foi/massachusetts-1/umass-amherst-and-raytheon-76083/>

The University explained that it would be fully withholding a number of documents and that those it would release, approximately 92 records by the agency's estimate, would require additional time to process.

In their estimation, UMass Amherst provided the following calculation:

Search: 5 hours at \$25/hour = \$125

Segregate/Redaction: 87 hours at \$25/hour = \$2,175

No charge for first 4 employee hours = -\$100

Total = \$2,200

Appeal the failure to segregate and redact potentially-exempt documents:

Though the University did cite exemption (u) to explain their charge for segregation and redaction of documents, it does not justify the complete nondisclosure. They are required to segregate and redact.

The University has not sufficiently explained why they need 92 hours to redact "trade secret" information from just 92 documents.

In a similar appeals case, decided by the Supervisor of Public Records, (attached here as "case #2), the Commonwealth found that a public records officer:

" May assess a charge for the segregation and redaction of exempt material under Exemptions ( c ) and/or ( o ) of the Public Records Law, however, based on the MBTA's July 1st fee estimate, it is unclear why it requires a total of 9 hours to redact the responsive records. Particularly, it is unclear the number of records the MBTA is looking to redact and the number of pages there are. It is additionally uncertain how many minutes per page the MBTA requires to review the responsive records. The MBTA must clarify these issues."

Simply invoking any exemption does not provide sufficient basis for the University's fee AND withholding of documents.

Unreasonable cost estimate:

This estimate assumes that each document will require one hour of work performed at the maximum rate allowable under the State's records law. I appeal the validity of this appraisal as a good faith estimate, as required under the law.

In the November 2018 Appeals decision (attached and labeled as "case #1"), the Commonwealth found that municipalities and agencies have to meet a "burden of specificity in assessing the number of hours and explaining why the estimated amount to time is required to produce the record."

The state also found that records officers have to "explain which employee's hourly rate was used to calculate the fee and whether that hourly was the lowest paid hourly rate of the employee who was capable of undertaking the tasks involved to produce the records."

We further contest any application of fees to search and redaction time used for records to which an outside statute cannot be applied:

In compliance with the precedent set by your office and the Massachusetts Public Records law, please instruct the FOIA officers at UMass Amherst to revise their fee estimate to a more reasonable proposal.

---

On July 17, 2019:

Subject: Re: Massachusetts Public Records Law Request: UMASS Amherst and Raytheon

We have responded to this request. See attached e-mail.

Best,

Ed Blaguszewski

\*\*\*\*\*

Ed Blaguszewski

Executive Director of Strategic Communications  
and Special Assistant

to the Vice Chancellor for University Relations

UMass Amherst

Munson Hall

Amherst, MA 01003

Office: 413-545-0444

Cell: 413-695-4522

[www.umass.edu/newsoffice](http://www.umass.edu/newsoffice)<<http://www.umass.edu/newsoffice>>

\*\*\*\*\*

---

On June 25, 2019:

Subject: Massachusetts Public Records Law Request: UMASS Amherst and Raytheon

To Whom It May Concern:

Pursuant to the Massachusetts Public Records Law, I hereby request the following records:

Materials related to any contributions (and associated terms or deliverables) made to this institution, and any portion thereof, by Raytheon (or any subdivision or representative thereof) between January 1, 2014 and June 25, 2019.

#### Contracts and agreements

A copy of any and all contracts (including associated amendments and exhibits), memorandums of understanding, or other agreements referencing or related to Raytheon or any subdivision thereof.

- If a contract(s) or agreement with Raytheon, or any subdivision thereof has been cancelled, please provide any and all materials related to its cancellation, including the agreement and any deliberative or evaluative materials related to its dissolution
- If a contract with Raytheon, or any subdivision thereof has been cancelled, please provide the statement from the university about cancellation.
- Please include as responsive any agreements provided by Raytheon, including but not limited to any resembling the example attached to this request.

#### 2) Gift receipts

A copy of any and all receipts, as well as related agreements and materials, associated with any and all gifts, donations, funding, or other contributions provided by Raytheon (or any subdivision or representative thereof) to this institution, and any portion thereof.

#### 3) Communications

-Include any and all written or recorded communications between Raytheon and UMASS Amherst University Relations (including the now-dissolved department of corporate relations, whose website and contact information can be found here: [https://www.umass.edu/corporate/contact\\_us.php](https://www.umass.edu/corporate/contact_us.php))

I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

I expect the request to be filled in an accessible format, including for screen readers, which provide text-to-speech for persons unable to read print. Files that are not accessible to screen readers include, for example, .pdf image files as well as physical documents.

I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

I expect the request to be filled in an accessible format, including for screen readers, which provide text-to-speech for persons unable to read print. Files that are not accessible to screen readers include, for example, .pdf image files as well as physical documents.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Ava Sasani

Filed via MuckRock.com

E-mail (Preferred): 76083-74339910@requests.muckrock.com

Upload documents directly:

[https://accounts.muckrock.com/accounts/login/?url\\_auth\\_token=AAAaUp0xsVhLfU1T0ucb9gaB3V0%3A1htc8e%3AZN3n0U9zZeZ2gCj9VZSxIY4pp6k&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency\\_login%252Funiversity-of-massachusetts-amherst-193%252Fumass-amherst-and-raytheon-76083%252F%253Femail%253Dpre%252540sec.ma.us](https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAaUp0xsVhLfU1T0ucb9gaB3V0%3A1htc8e%3AZN3n0U9zZeZ2gCj9VZSxIY4pp6k&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Funiversity-of-massachusetts-amherst-193%252Fumass-amherst-and-raytheon-76083%252F%253Femail%253Dpre%252540sec.ma.us)

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News  
DEPT MR 76083  
411A Highland Ave  
Somerville, MA 02144-2516

PLEASE NOTE: This request was filed by a MuckRock staff reporter. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.



**From:** Christine Wilda cwilda@umass.edu  
**Subject:** FW: Massachusetts Public Records Law Request: Raytheon and UMASS Public Records Request Submitted Online  
**Date:** July 17, 2019 at 2:32 PM  
**To:** Edward Blaguszewski edblag@umass.edu



-----Original Message-----

From: Christine Wilda <cwilda@umass.edu>  
Sent: Friday, July 5, 2019 4:12 PM  
To: 'sasani.a@husky.neu.edu' <sasani.a@husky.neu.edu>  
Cc: Records Administrator - UMass Amherst <recordsadmin@umass.edu>  
Subject: RE: Massachusetts Public Records Law Request: Raytheon and UMASS Public Records Request Submitted Online

Dear Ava,

We received your request for "materials related to any contributions (and associated terms or deliverables) made to this institution, and any portion thereof, by Raytheon (or any subdivision or representative thereof)" on June 21, 2019.

Some of the records will not be produced because they are exempt under public records statute, Chapter 66 of the General Laws. Specifically, portions of the records that contain scopes of work and licensing terms must be redacted pursuant to G.L. c. 4 §7 cl. 26(u). Exemption (u) permits the University to withhold "trade secrets or proprietary information provided to the University by research sponsors [...]" This information must be redacted pursuant to exemption (u) because it constitutes trade secrets and/or proprietary information provided to the University by a research sponsor, and pursuant to exemption (a), as G.L. c. 93 §42 prohibits disclosure of trade secrets without the trade secret owner's express consent. Pursuant to G.L. c. 93 §§42-42G, disclosure of trade secrets without consent constitutes misappropriation (as defined in G.L. c. 93 §42(2)).

We will be producing the remaining records which are not exempt under exemptions (a) and (u), but will not be able to produce them requested within the ten business day timeframe due to the amount of time it will take to search and review the records for possible exemption or redaction. A preliminary search has revealed approximately 92 records to be reviewed. We therefore require additional time to produce the records sought.

It would be helpful to narrow the scope of your request, by:

- Limiting the records requested to a particular time period, or a shorter time period;
- Limiting the number of persons or topics within your request.

Please contact me to discuss modifying your request.

At this time, we have made a good faith estimate of the fees necessary to produce the records you have requested.

|  |                         |         |
|--|-------------------------|---------|
| Search:                                | 5 hours at \$25/hour =  | \$125   |
| Segregate/Redaction:                   | 87 hours at \$25/hour = | \$2,175 |
| No charge for first 4 employee hours = |                         | -\$100  |
| Total =                                |                         | \$2,200 |

Once we receive your payment (check payable to the University of Massachusetts) we will begin the process to provide the records. If the total cost of production exceeds this estimate, we will advise you of the additional cost; if the total cost is less than the estimate, we will refund that amount to you. Please address all correspondence regarding your request to me at the address below.

Under Chapter 66 of the General Laws, you have the right to appeal our disposition of your request to the Supervisor of Public Records, Office of the Secretary of State, pre@sec.state.ma.us and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

Sincerely,  
Christine

---

Christine M. Wilda  
Associate Chancellor for Compliance  
UMASS Amherst  
340 Whitmore Building  
Amherst, MA 01003  
Ph: 413-545-2148  
Fax: 413-545-2114  
cwilda@umass.edu

-----Original Message-----

Original message

From: University of Massachusetts <do-not-reply@umassp.edu>  
Sent: Friday, June 21, 2019 10:18 AM  
To: Records Administrator - UMass Amherst <recordsadmin@umass.edu>  
Subject: Massachusetts Public Records Law Request: Raytheon and UMASS Public Records Request Submitted Online

Submitted on Friday, June 21, 2019 - 10:17am Submitted by anonymous user: 69.16.33.32 Submitted values are:

**==Requester Information==**

Requester Email Address: sasani.a@husky.neu.edu  
Requester Name: Ava Sasani

**==Request Details==**

Subject: Massachusetts Public Records Law Request: Raytheon and  
UMASS

Campus from which the records are being requested: Amherst  
Amherst Department: Other

Type of record being requested: Other Public Records

Is the record being used for commercial purposes? No

Is this a media inquiry? Yes

Nature of Request: Massachusetts Public Records Law Request:

Raytheon and UMASS

Full record request details:

To Whom It May Concern:

Pursuant to the Massachusetts Public Records Law, I hereby  
request the following records:

Materials related to any contributions (and associated terms or  
deliverables) made to this institution, and any portion thereof,  
by Raytheon (or any subdivision or representative thereof).

**Contracts and agreements**

A copy of any and all contracts (including associated amendments  
and exhibits), memorandums of understanding, or other agreements  
referencing or related to Raytheon or any subdivision thereof.

- If a contract(s) or agreement with Raytheon, or any subdivision  
thereof has been cancelled, please provide any and all materials  
related to its cancellation, including the agreement and any  
deliberative or evaluative materials related to its dissolution
- If a contract with Raytheon, or any subdivision thereof has  
been cancelled, please provide the statement from the university  
about cancellation.
- Please include as responsive any agreements provided by  
Raytheon, including but not limited to any resembling the example  
attached to this request.

**Gift receipts**

A copy of any and all receipts, as well as related agreements and  
materials, associated with any and all gifts, donations, funding,  
or other contributions provided by Raytheon (or any subdivision  
or representative thereof) to this institution, and any portion  
thereof.

I also request that, if appropriate, fees be waived as we believe  
this request is in the public interest, as suggested but not  
stipulated by the recommendations of the Massachusetts Supervisor  
of Public Records. The requested documents will be made available  
to the general public free of charge as part of the public  
information service at MuckRock.com, processed by a  
representative of the news media/press and is made in the process  
of news gathering and not for commercial usage.

I expect the request to be filled in an accessible format,  
including for screen readers, which provide text-to-speech for  
persons unable to read print. Files that are not accessible to  
screen readers include, for example, .pdf image files as well as  
physical documents.

In the event that there are fees, I would be grateful if you  
would inform me of the total charges in advance of fulfilling my

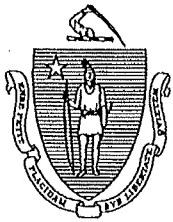
request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Ava Sasani

The results of this submission may be viewed at:  
<https://www.umassp.edu/node/23136/submit>mission/52866



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

July 17, 2019  
**SPR19/1324**

Julie Ciollo, Esq.  
Assistant General Counsel/Records Access officer  
Office of the General Counsel  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Suite 3910  
Boston, MA 02116

Dear Attorney Ciollo:

I have received the petition of Colman Herman appealing the response of the Massachusetts Bay Transportation Authority (MBTA) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on June 20, 2019, Mr. Herman requested "... hard copies and electronic copies of any and all settlement agreements, exit agreements, severance agreements, separation agreements, and/or the like executed with former employees by the [MBTA].” Mr. Herman mentioned that “[t]his is for the period January 1, 2018 to the present.” The MBTA responded on July 1, 2019, providing a fee estimate. Objecting to the fee, Mr. Herman petitioned this office and this appeal, SPR19/1324, was opened as a result.

***Fee estimates – agencies***

An agency may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection, G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record, G. L. c. 66, § 10(d)(i).

Agencies may not assess a fee for the first four hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested, G. L. c. 66, § 10(d)(ii). Where appropriate, agencies may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(ii); 950 C.M.R.

32.06(4).

*The MBTA's July 1<sup>st</sup> fee estimate*

In its fee estimate, the MBTA states that “[i]n order to fully comply with [Mr. Herman’s] request, all responsive agreements must be compiled from various electronic and hard copy sources within the MBTA, reviewed for any applicable exemptions, and redacted in accordance with the Public Records Law.” The MBTA’s fee estimate indicates the following: “[s]earch and compilation time: 2.00 hours[.] [r]edaction (to the extent allowed by Supervisor of Records) time: 9.00 hours[.] Reproduction time: 1.00 hours[.] [t]otal estimated time: 12.00 hours[.]”

The MBTA further states that its hourly rate of \$25.00 per hour, “. . . is equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce the records requested.” The MBTA states that “[n]o fee will be assessed for the first four hours of work. Therefore, the estimated cost of complying with [Mr. Herman’s] request is 8 hours of chargeable work at \$25.00 per hour, or \$200.00.”

*Fees to search for, compile, segregate, redact or reproduce a record request*

The Regulations provide that in cases where necessary to reproduce the requested records a records access officer may charge a fee to search for, compile, segregate, redact or reproduce a record requested based on the hourly rate of the lowest paid employee who is capable of performing the task. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.07(2). Additionally, the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record. Id. An agency may not charge for segregation and redaction unless required by law or a petition has been filed and approved by the Supervisor of Records. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.06(4).

The MBTA previously submitted a petition related to the ability to assess fees for time spent segregating and/or redacting responsive records. See SPR19/1263 Determination of the Supervisor of Records (June 27, 2019). Please refer to the determination in SPR19/1263 for analysis of this issue.

While I found in SPR19/1263 that the MBTA may assess a charge for the segregation and redaction of exempt material under Exemptions (c) and/or (o) of the Public Records Law, based on the MBTA’s July 1<sup>st</sup> fee estimate, it is unclear why it requires a total of 9 hours to redact the responsive records. Particularly, it is unclear the number of records the MBTA is looking to redact and the number of pages there are. It is additionally uncertain how many minutes per page the MBTA requires to review the responsive records. The MBTA must clarify these issues.

Julie Ciollo, Esq.  
Page 3  
July 17, 2019

SPR19/1324

*Conclusion*

Accordingly, the MBTA is ordered to provide Mr. Herman with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

*Rebecca Murray*

Rebecca S. Murray  
Supervisor of Records

cc: Colman Herman



## The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

November 21, 2018  
**SPR18/1649**

Kelly J. Cote, CMC  
Town Clerk  
Town of Uxbridge  
21 South Street  
Uxbridge, MA 01569

Dear Ms. Cote:

I have received the petition of Justin Piccirillo appealing the response of the Town of Uxbridge (Town) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on October 15, 2018 Mr. Piccirillo requested a copy of: “all text or other electronic messages made to or from the phone of [an identified employee] – from the dates of Feb 5, 2018 to present.”

In an October 23, 2018 response, the Town provided a fee estimate totaling \$415. The estimate included approximately 15 hours at a maximum rate of \$25.00 per hour. The Town’s estimate also added a fee for: “a software subscription to allow the printing and transposing of the texts at a cost of \$40.00.” Upon receipt of the estimate, Mr. Piccirillo objected to paying the cost of the software subscription. He stated, “[m]unicipalities may not recover fees associated with record organization.” As a result, the Town revised its fee estimate by eliminating the \$40 software subscription charge, and provided a revised cost of \$375.

On November 8<sup>th</sup>, Mr. Piccirillo petitioned the Supervisor of Records (Supervisor) regarding the October 23<sup>rd</sup> revised estimate, and this appeal was opened.

### ***Fee Estimates***

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

A municipality may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must

reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Municipalities may not assess a fee for the first (two) 2 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested unless the municipality has 20,000 people or less. G. L. c. 66, § 10(d)(iii). Where appropriate, municipalities may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. However, municipalities may charge more than \$25 per hour if such rate is approved by the Supervisor under a petition under G. L. c. 66, § 10(d)(iv).

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor under a petition under G. L. c. 66, § 10(d)(iv). G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

#### *The Town's October 23, 2018 fee estimate*

On October 23<sup>rd</sup>, the Town provided an estimate of 15 hours of time at \$25.00 per hour for a total of \$375.00. The Town's estimate simply states, “[i]t will take approximately 15 hours to process the texts at the maximum rate of \$25 per hour.” This estimate did not specify what tasks allowed by the Public Records Law and its Regulations would be undertaken and why the Town estimates that it will take 15 hours to complete the tasks. Nor, did the Town explain which employee's hourly rate was used to calculate the fee and whether that hourly was the lowest paid hourly rate of the employee who was capable of undertaking the tasks involved to produce the records.

#### *Fees to search for, compile, segregate, redact or reproduce a record request*

The Regulations provide that in cases where it is necessary to reproduce the requested records, a records access officer (RAO) may charge a fee to search for, compile, segregate, redact or reproduce a record requested based on the hourly rate of the lowest paid employee who is capable of performing the task. G. L. c. 66, § 10(d); see also 950 C.M.R. 32.07(2). Additionally, the reasonable fee for reproduction shall not exceed the actual cost of reproducing the record. Id.

#### *Employee time*

The Regulations provide that a municipality with a population of 20,000 or fewer may assess a fee for the first two hours of work performed. 950 C.M.R. 37.07(2)(m)(2). Population data shall be determined by the decennial U.S. Census and it is the burden of the municipal RAO

to provide such information in its response. 950 C.M.R. 37.07(2)(m)(2)(i-ii). The Town did not indicate whether it is required to waive the first two hours of time due to its population. The Town should indicate its population and whether it may charge for the first two hours of time.

In a November 20<sup>th</sup> telephone conversation with a Public Records Division staff attorney, you explained that the Town assessed the maximum allowable hourly rate of \$25.00 for the tasks necessary to complete the request, because the employee who will complete the tasks has an hourly rate in excess of the \$25.00 per hour maximum. The Town indicated that the request for the text messages pertains to the Town Manager's cell phone, and therefore, the Town Manager will search for and compile the text messages.

Based on the Town's October 23<sup>rd</sup> revised fee estimate, it is unclear why the Town requires 15 hours of the Town Manager's time to complete the tasks necessary to provide Mr. Piccirillo with the responsive text messages. Whereas the Town has not met its burden of specificity in assessing the number of hours and explaining why the estimated amount of time is required to produce the records, the Town must provide more detail regarding the tasks and the amount of time for each task undertaken by the Town Manager. The Town's estimate is also uncertain how many hours were allocated to search, compilation and printing or copying of the records. Therefore, the Town must clarify this estimate.

For the reasons discussed above, I find the Town must revise its fee estimate or provide further explanation of how the fee assessed in its October 23 and November 1<sup>st</sup> revised estimate as to the total amount of \$375 is consistent with G. L. c. 66, § 10(d).

### ***Conclusion***

Accordingly, the Town is ordered to provide Mr. Piccirillo with a revised fee estimate for the request, in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Justin Piccirillo